IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision Petition 162 of 2006.

Date of decision:May 25, 2007.

Dina Nath **….Petitioner.**

Versus

Saral Kanta and others **….Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner **Mr. R.K.Gautam, Sr. Advocate, with Mr. Naveen Bhardwaj, Advocate.**

For the Respondents: **Mr. N.K.Thakur, Advocate.**

Dev Darshan Sud, J. (Oral).

This revision petition has been filed by the Judgment Debtor against the order passed by the learned Civil Judge (Junior Division), Court No. I, Hamirpur, H.P., in CMA No. 212/1994 on 25.9.2006, in an application under Order 21 Rule 32 of the Code of Civil

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

Procedure filed by the Decree Holder alleging disobedience by the Judgment Debtors.

The decree holder has submitted that a decree of declaration and permanent injunction was passed in his favour on 7.8.1982 in Civil Suit No. 193 of 1979, in case titled Smt. Saral Kanta versus Dina Nath and others. After trial, a decree for declaration and permanent injunction was passed with respect to the land as detailed in the plaint. The decree having become final, breach was alleged by the plaintiff – decree holder alleging various acts of commission by the judgment-debtor. After trial, learned trial Court accepted the petition and passed the following order:

> **"30. Keeping in view, the reasons and observations, here-in-before made, the present petition under order 21 rule 32 CPC is partly allowed. The respondent No. 1 Dina Nath is held liable for action under Order 21 Rule 32 CPC for having an opportunity of obeying the decree and has willfully fail to obey it. Accordingly the decree is enforced and the respondent Sh. Dina Nath son of Sh. Lachhman is order to undergo**

a Civil imprisonment for a period of one month and in addition to it his property shall also remain attached. Necessary warrant be issued against respondent No. 1 Dina Nath on deposit of requisite subsistence allowance. The petitioner has failed to prove that the other respondent has an opportunity of obeying the decree and has willfully fail to obey it. No case is made out against the other respondent. It is hereby clarified that this order shall remain suspended for a period of one month so as to enable the party to prefer an appeal/ revision before the Hon'ble appropriate court if desired. The warrant of attachment and warrant of imprisonment be issued after the expiry of one month in case no order is received from the Hon'ble appellate or revisional court. The file after its due completion and after doing the needful be consigned to the Record Room…"

I have heard the learned counsel for the parties and gone through the record.

I was disinclined to accept the prayer made by the petitioner after going through the judgment of the learned executing Court. I am in agreement with the findings that the petitioner is guilty of willful disobedience. However, I am prompted to interfere only for the reason that the judgment debtor is 90 years of age.

Without going into the merits of the case, the following order is passed:

> **(i)The Sub Divisional Officer (Civil), Hamirpur is appointed as Local Commissioner. He will be furnished with a copy of the judgment and decree, as also the particulars of violation as alleged by the decree holder.**
>
> **(ii) He will demarcate the suit land in the presence of the parties and with the assistance of such officers/ staff he may require. His report shall be final which will be accepted by the parties.**
>
> **(iii)The petitioner- decree holder will remove the offending**

construction or other encroachments / obstacles which he may have placed on the land. This will be done under the supervision of the Sub Divisional Officer (Civil), who may, if required, take the assistance of the police. The petitioner – judgment debtor will be responsible for the entire costs of removal of encroachment / construction /obstacles.

(iv)The entire exercise will be completed within a period of eight weeks from today. The costs of the commission is fixed tentatively at Rs.7000/- which will be borne by the petitioner. In case additional expenses are incurred, those shall also be borne by the petitioner herein.

(v)In case of petitioner – judgment refusing to co-operate with the Commission in removing the obstruction etc., or in any manner avoiding execution of this order, the present revision will revive and will be deemed to have been

dismissed thereby enforcing the order passed by the learned Executing Court.

This petition is accordingly disposed of in terms of the above. There shall be no order as to costs.

May 25, 2007(PC). (Dev Darshan Sud), J.